



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Public Service Commission TITLE-SERIES: 150-37
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 150-37 Rules Governing the Occupancy of Customer-Provided Conduit

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 24-2E-3, 24-1-7, 24-2-1 and 24-2-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

none

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

To extend the sunset date pursuant to WV Code §§29A-3-19

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The sunset date for these rules was set originally to be August 1, 2022. The Commission requested to extend the sunset date so that the rules would not expire before the Commission had an opportunity to address with the Legislative Rule Review Committee whether the Rules should be extended beyond new sunset date.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

none

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

none

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

none

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			n/a
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			n/a

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jane Neal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

**SERIES 37
RULES GOVERNING THE OCCUPANCY OF CUSTOMER-PROVIDED CONDUIT**

§150-37-1. General.

- 1.1. Scope. -- These rules are promulgated to effectuate W. Va Code §24-2E-3.
- 1.2. Authority. -- W. Va. Code §§24-2E-3, 24-1-7, 24-2-1 and 24-2-6.
- 1.3. Filing Date. -- ~~May 17, 2017.~~
- 1.4. Effective Date. -- ~~August 1, 2017.~~
- 1.5. Sunset provision. This rule shall terminate and have no further force or effect on August 1, ~~2022~~ 2023.

§150-37-2. Definitions.

- 2.1. "Apparatus" -- The Conduit or Other Underground Construction (but not including the cable) that provides a cable pathway between the Service Provider network and the Customer.
- 2.2. "Commission" -- The Public Service Commission of West Virginia.
- 2.3. "Conduit" -- A structure containing one or more cables or one or more Ducts used to house and protect cables.
- 2.4. "Customer" -- Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., who purchases services from a Service Provider.
- 2.5. "Customer-Provided Conduit" -- The Conduit either installed by, or on behalf of, a Customer at the Customer's expense on real property either owned, managed or administered by the Customer for purposes of installing wires and cable for the provision of services. The cable inside the Conduit remains under the ownership of the Service Provider until the point of entrance or service point as per the National Electrical Code (NEC).
- 2.6. "Duct" -- A single enclosed race way placed inside a Conduit for conductors or cable.
- 2.7. "Intercept" -- The physical components (including Conduit, Duct and fittings) required to insert a cable into an empty or occupied Conduit while maintaining the seal integrity at the Intercept installation point of the Conduit and physical protection of any installed cable.
- 2.8. "Other Underground Construction" -- Manholes, vaults, Intercepts, universal access facilities, Ducts and any other part or appurtenance of a customer-provided system that is used to provide a cable pathway between the Service Provider network and the Customer.
- 2.9. "Service Provider" -- A Customer, Telephone Public Utility, Telephone Company or any other entity that occupies, or desires to occupy, Conduit or Other Underground Construction that is used to provide services by a Telephone Public Utility and that has been provided at the Customer's expense.
- 2.10. "Telephone Company" or "Telephone Public Utility" -- Any provider of telecommunications or data services to the public under the jurisdiction of the Commission.

2.11. “Universal Access Point (UAP)” -- An access point located at the terminus of the installed Customer-Provided Conduit or Other Underground Construction installed by the Customer or Service Provider to serve as an entry point for multiple Service Providers into the Customer-Provided Conduit.

§150-37-3. Telephone Conduit Occupancy.

3.1. Prohibition and Ownership.

3.1.a. A Telephone Public Utility may not prohibit, either by contract or service tariff, a Customer who has provided Conduit or Other Underground Construction provided at the Customer’s expense from using the Conduit or Other Underground Construction for purposes other than services provided by the Telephone Company. A Customer who provides the Conduit or Other Underground Construction is the owner of that Apparatus.

3.1.b. A Telephone Public Utility shall not be permitted to exercise management, oversight or administrative authority relative to access, occupancy or utilization of Customer-Provided Conduit or Other Underground Construction.

3.1.c. A Telephone Public Utility shall not be permitted to reserve space within Customer-Provided Conduit or Other Underground Construction.

3.1.d. Unoccupied Duct space owned by the Customer within Customer-Provided Conduit or Other Underground Construction is presumed available for use by all Telephone Public Utilities or Service Providers with the consent of the Customer.

3.2. Compliance with Standards, Practices, Rules and Orders.

3.2.a. A Customer and all occupants of Conduit or other underground Apparatus shall comply with the rules, regulations and orders of the Commission, the National Electrical Safety Code, the National Electrical Code, the Manual of Construction Procedures (The Blue Book), the rules and regulations of the Occupational Safety and Health Administration and any other lawful and applicable laws, rules, regulations and orders.

3.2.b. No Customer, Telephone Public Utility, Telephone Company or other occupant of any Conduit or other underground Apparatus may prohibit, prevent or interfere with the compliance of any person with its obligations under the rules, regulations and orders of this Commission, including without limitation any obligation as a carrier of last resort.

3.2.c. When the use of Customer-Provided Conduit or Other Underground Construction requires the involvement of more than one Service Provider, a Telephone Public Utility shall cooperate with and give its approval, when necessary, for access by other Service Providers. The only acceptable basis for disagreement by a Telephone Public Utility shall be that the proposed joint use (i) will pose a clear and imminent threat to existing facilities or (ii) would constitute a violation of any of the standards, practices, rules and orders which which compliance is required by these rules.

§150-37-4. General Practices.

4.1. Coordination of activities of multiple Service Providers.

When multiple Service Providers are involved, the coordination of their activities should be guided by section 3 of this rule and the general practices of the industry, which include but are not limited to:

4.1.a. Reasonable advance notice shall be provided to affected parties of work in the Customer-Provided Conduit or Other Underground Construction.

4.1.b. After the effective date of these rules, new Intercepts are permitted only in instances when the affected parties agree and where it is not feasible to access the Customer-Provided Conduit or Other Underground Construction at the UAP. The only acceptable basis for disagreement by a Service Provider shall be that the proposed Intercept (i) will pose an imminent threat to the existing facilities or (ii) would constitute a violation of any of the standards, practices, rules and orders with which compliance is required by these rules.

4.1.c. The design of the new Intercept shall follow generic engineering drawings as agreed to by the Customer and will be provided to the affected parties.

4.1.d. Customer-Provided Conduit or Other Underground Construction shall have a Universal Access Point to facilitate the Customer's receipt of service from multiple Service Providers. The UAP shall permit ready access by each user to the Conduit system, and shall minimize interference with, and avoid danger to, other Service Provider facilities. It is desirable that the UAP be provided at the time of the initial installation of the Conduit.

4.1.e. Installation of a Universal Access Point shall provide access for multiple Service Providers to the Customer-Provided Conduit or Other Underground Construction and shall:

4.1.e.1. provide adequate working space to avoid interference with, or damage to, existing installed cables or the Conduit,

4.1.e.2. maintain seal integrity of the Conduit system, and

4.1.e.3. be agreed to by the Customer.

4.1.f. It is desirable in the future that the UAP be supplied and installed by the Customer as part of the general installation of the Customer-Provided Conduit or Other Underground Construction. Thereafter, all Service Providers shall enter the Customer-Provided Conduit or Other Underground Construction through the UAP, which shall:

4.1.f.1. permit ready access by each user to the capacity in the Customer-Provided Conduit or Other Underground Construction and

4.1.f.2. minimize interference with, and avoid danger to, other Service Provider facilities.

4.1.g. Whenever feasible, telecommunications or other Service Provider facilities owned or belonging to the same entity shall be installed and maintained within the same Duct within Customer-Provided Conduit or Other Underground Construction, considering the need to separate different cable types and materials.

4.1.h. Companies should reasonably allow shared cable installations in Ducts where Duct access is restricted by available capacity.

4.1.i. When needed to provide necessary capacity, unused cables in Customer-Provided Conduit or Other Underground Construction should be extracted in a reasonably expeditious manner at no cost to the Customer.

4.1.j. Initial and subsequent installations into new Customer-Provided Conduit or Other Underground Construction should use separate Ducts when feasible.

4.1.k. Upon request by the Customer, a Telephone Public Utility or other Service Providers shall examine and report the status of their existing entrance paths into Customer-Provided Conduit or Other Underground Construction in a reasonably expeditious manner.

4.1.l. Whenever technically feasible, a Telephone Public Utility or other Service Provider shall consolidate or minimize entrance points into the Customer-Provided Conduit or Other Underground Construction.

4.1.m. A Service Provider should not bill another Service Provider for access to or occupancy of Customer-Provided Conduit or Other Underground Construction.